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Re: CC Docket No. 99-200

Dear Ms. Salas:

Enclosed please find a courtesy copy of the Petition of the Maine Public Utilities Commission for Waiver to Continue State Pooling Trials until National Pooling is Implemented. The document was electronically filed today in the above-captioned matter.

Sincerely,

Trina M. Bragdon

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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AUG 21 2000

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In the matter of:

Numbering Resource Optimization

CC Docket No. 99-200

**PETITION OF THE MAINE PUBLIC UTILITIES COMMISSION  
FOR WAIVER TO CONTINUE STATE POOLING TRIALS  
UNTIL NATIONAL POOLING IS IMPLEMENTED**

Pursuant to Section 1.3 of the Federal Communications Commission (FCC or Commission) rules, the Maine Public Utilities Commission (MPUC or Maine) respectfully submits this petition for waiver of the Commission's new requirement that states conform their pooling trials to the Commission's national pooling rules by September 1, 2000, as directed in the Commission's March 31, 2000 *Report and Order and Further Notice of Proposed Rule Making (NRO Order)*.<sup>1</sup> Specifically, the MPUC requests that the Commission grant a waiver of this requirement so that Maine can continue to impose its number pooling rules, especially our utilization threshold and sequential numbering requirements, until the national pooling rollout begins, at which time Maine will conform with the national pooling rules.<sup>2</sup>

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<sup>1</sup> Numbering Resource Optimization, *Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 99-200, FCC 00-104 (rel. March 31, 2000) (*NRO Order*).

<sup>2</sup> We note that we have also filed with the FCC a Petition for Reconsideration on July 17, 2000, on this issue asking the FCC to modify the *NRO Order* to require state conformance with FCC numbering pooling rules concurrent with the start of the national pooling rollout.

## I. INTRODUCTION

Under § 1.3 of the Commission's rules, the Commission may exercise its discretion to waive a rule where there is "good cause" to do so. For the reasons explained below, the MPUC fully satisfies the standards for a waiver.<sup>3</sup>

As the Commission is aware, the MPUC has been working diligently since August of 1998 to resolve numbering issues in Maine. We have been at the forefront of this issue, working with the Commission, the industry, the North American Numbering Plan Administrator (NANPA) and the public to ensure that Maine consumers are not subjected to the costs and inconveniences of an unnecessary new area code. Even before the Commission delegated authority to Maine, we implemented a number of measures under Maine law to ensure that numbering resources were allocated fairly and efficiently. Once the Commission delegated the MPUC explicit authority to begin thousand block pooling and to impose utilization thresholds and facilities readiness requirements, the MPUC assembled a comprehensive conservation plan. Indeed, many of the measures adopted by the FCC are very similar to those previously adopted by the MPUC.

Pursuant to its delegated authority, in November 1999, the MPUC adopted a 75% utilization threshold for both pooling and non-pooling carriers. Further, in June 2000, Maine became the fifth state to implement thousand block pooling. We strongly

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<sup>3</sup> "Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule and such deviation serves the public interest." *In the Matter of Implementation of the Pay Telephone Reclassification Order and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order at 12, par. 23 (rel. April 4, 1997), citing *Northwest Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); See also in the *Matter of Implementation of the Pay Telephone Reclassification Order and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order at 11-12, par. 23 (rel. April 15, 1997).

believe that our 75% utilization threshold (or fill rate) and sequential numbering requirements are essential components of our conservation plan. Imposition of these requirements has increased the usage of numbers already held by both pooling and non-pooling carriers, more closely aligning carrier use of numbers with their actual needs. Proof of our assertions lies in the fact that the projected exhaust date for the 207 area code continues to move further and further into the future.<sup>4</sup>

We urge the Commission not to reverse the significant headway Maine has made through our pooling trial and to grant the MPUC the requested waiver. To require Maine to conform by September 1, 2000, with the national pooling rules for the national pooling rollout which may not begin for another eighteen months to two years,<sup>5</sup> would be premature and a detrimental step backwards in delaying area code exhaust.

## **II. THE REQUIREMENT FOR WHICH WAIVER IS SOUGHT**

In the *NRO Order*, the Commission required that state commissions conform their pooling trials with the national “framework” by September 1, 2000. Compliance with the national “framework” would mean discontinuing state-mandated utilization rates and following federal sequential numbering rules.<sup>6</sup>

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<sup>4</sup> NANPA’s May 2000 projection, which does not include the impact of pooling, is the third quarter of 2002 – a full two years beyond their initial projections. The MPUC, based upon its own calculations, expects that pooling will further delay exhaust for at least 5 more years, if not longer.

<sup>5</sup> According to the *NRO Order*, the national pooling rollout will begin within nine months after the national Pooling Administrator is selected. ¶ 168. Given the current schedule for selection, it will likely be at least 18 months until national pooling is rolled out.

<sup>6</sup> *Responses to Questions in the Numbering Resource Optimization Proceeding*, CC Docket No. 99-200, July 12, 2000 (Clarification Notice).

In the *NRO Order*, the FCC adopted, in concept, the application of utilization thresholds to non-pooling carriers seeking growth NXX codes.<sup>7</sup> However, the Commission declined to adopt a specific threshold, and instead issued a request for further comments on what the threshold level should be.<sup>8</sup> In addition, the Commission, declined to adopt utilization thresholds for pooling carriers, because, the FCC reasoned, pooling carriers are required to donate to the pool uncontaminated and lightly contaminated thousands-blocks (*i.e.*, with ten percent or less contamination) to both initially stock the pool and later re-stock the pool.<sup>9</sup> It is important to note, however, that the Industry Numbering Committee (INC) Number Pooling Guidelines mandate only that pooling carriers donate 1,000 blocks to the pool on the Block Donation Date, at the start of the pooling trial. The INC Pooling Guidelines do *not* require carriers to donate blocks to a number pool after the initial donation has been completed. In fact, Section 8.4.1 provides that carriers “will *not* be required to donate contaminated thousands-blocks for ongoing replenishment of the industry inventory pool” (emphasis added).

Instead of meeting a utilization threshold, under the FCC’s rules pooling carriers must demonstrate the requisite “months to exhaust” (MTE) forecast. This “months to exhaust” calculation relies upon a carrier’s *subjective* projection of its future numbering needs. Additionally, it now appears that NANPA will not even be reviewing the utilization rates – leaving pooling carriers free to acquire numbering resources well in

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<sup>7</sup> *NRO Order*, ¶ 103

<sup>8</sup> *NRO Order*, ¶¶ 103, 248.

<sup>9</sup> *NRO Order*, ¶ 156.

advance of any actual need for them.<sup>10</sup> The Commission has, however, left open the possibility that it might “revisit the question of whether *all* carriers should be subject to meeting a utilization threshold to obtain growth numbering resources if we find that such thresholds increase numbering use efficiency.”<sup>11</sup>

With regard to sequential numbering, the *NRO Order* implements a “flexible requirement” that carriers first assign all available numbers within an opened thousand block before opening another, unless the available numbers are “not sufficient to meet a customer request.”<sup>12</sup> This very subjective standard provides little specific guidance to carriers and provides them with ample room to avoid strict compliance. Further, the FCC has failed to provide any enforcement mechanism or penalties for violating the requirements.

### **III. MAINE’S SUCCESSFUL IMPLEMENTATION OF POOLING**

As stated earlier, Maine requires that both pooling and non-pooling carriers comply with strict sequential numbering rules and to meet a 75% utilization threshold (or fill rate) before any growth numbering resources are allocated. Specifically, a non-pooling carrier must first obtain an overall 75% utilization rate in all its contaminated thousand blocks in a particular rate center before it can open any lightly contaminated (less than 10%) blocks. It must then obtain an overall 75% utilization rate in all its contaminated blocks before opening an uncontaminated block. Pooling carriers must

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<sup>10</sup> See July 18, 2000 Letter Agreement between the FCC and NANPA.

<sup>11</sup> *NRO Order* ¶ at 103 (emphasis added).

<sup>12</sup> *NRO Order* at ¶ 244.

meet the same 75% fill rate before obtaining a new block from the pool. In order to ensure carrier access to numbers when they cannot meet these standards for good cause, the Commission has delegated to its staff the authority to waive these requirements.

Since these requirements were imposed, only three carriers have requested growth codes. In the first two cases, the carriers did not actually need a growth code but needed an additional code because of technical constraints. Staff approved both requests in an expeditious manner upon receipt of the necessary proof. With regard to the third request, upon being reminded of the Commission's requirement, the carrier withdrew its request (without complaint). Indeed, no carrier has complained to the Commission or its staff that the 75% threshold is unreasonable or unachievable or that they have suffered any hardships or numbering shortages because of the fill rate and sequential numbering requirements.

We believe that the application of our utilization and sequential numbering requirements has substantially contributed to the success of our pooling trial. The 75% utilization threshold has ensured that only those blocks and codes that are actually needed are assigned and therefore conserves numbers in the 207 area code. We concur with the California Public Utilities Commission (CPUC) that carriers' forecasts far exceed their actual needs. Under the FCC's new requirements pooling carriers will be allowed to acquire many more new numbers than they need by submitting a "months to exhaust" calculation based upon a completely subjective projection of future numbering needs. However, these carrier projections are far from accurate. Indeed, if all of the

blocks and codes forecasted by carriers since 1998 had been assigned, the 207 area code would be exhausted. Instead, exhaust is not projected for many years.

As we have seen previously, relying upon a carrier's willingness to donate numbers and subjective standards invariably leads to inefficient allocation of numbering resources. As both the CPUC and MPUC provided in our respective Petitions for Reconsideration, the Commission should not assume that carriers will only ask for the resources they need and give back any that they do not need. Subjective criteria from carriers do not impose adequate discipline on a carrier's ability to stockpile numbers for which it has no immediate need. As we stated in our Petition for Reconsideration, objective criteria, such as utilization rates, eliminates the dangers associated with subjective, overly optimistic projections of growth.

By waiving the requirement of state pooling rules to conform to the national pooling rules by September 1, 2000, the Commission will also benefit from state experiences. As we noted earlier, the Commission, at a later date, will establish rules for utilization thresholds for non-pooling carriers and possibly, and we urge the Commission to do so, for pooling carriers if the Commission finds that such thresholds significantly increase number use efficiency.<sup>13</sup> Waiving this rule would allow Maine to continue its success in number pooling and delaying numbering exhaust as well as provide the Commission with useful data and experience to draw from. Finally, by leaving the existing state utilization thresholds in place until the national pooling roll-out begins, carriers will be spared the confusion caused by switching now, then switching back later if the FCC changes its policy.

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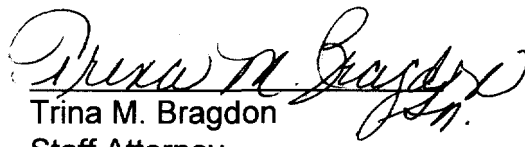
<sup>13</sup> *NRO Order* at ¶ 142.



#### IV. CONCLUSION

For all of the reasons stated, the MPUC strongly urges the Commission not to reverse the headway Maine has made through our pooling trial and grant our requested waiver of the Commission's requirement that state commissions conform their pooling trials with the national pooling rules by September 1, 2000.

Respectfully submitted,

  
Trina M. Bragdon  
Staff Attorney  
Maine Public Utilities Commission

Dated: August 14, 2000

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